SHENCOURT SDN BHD A

v.

ASEAMBANKERS MALAYSIA BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR B
NALLINI PATHMANATHAN J
[ORIGINATING SUMMONS NO: 24NCC-375-11-2013]
20 JANUARY 2014

CIVIL PROCEDURE: *Stay - Stay of execution - Whether stay of execution of monetary judgment amounts to stay of receivership - Whether prevents appointment of receivers and managers* C

COMPANY LAW: *Receivership - Appointment of receivers and managers (R&M) - Application for declaration that appointment of R&M null and void - Contractual entitlement to appoint R&M arising under debenture - Whether appointment of R&M mala fide - Whether debenture holder estopped from appointing R&M - Whether appointment of R&M prevented by stay of execution of monetary judgment* D

The first four defendants ('the banks') had granted syndicated facilities in the sum of RM62.5 million ('the facilities') to the plaintiff to finance the plaintiff's development project known as Galaxy Ampang. The first defendant was the facility and security agent for the facilities. The facilities were secured by an assignment over the land on which Galaxy Ampang was situated, as well as four debentures over all of the plaintiff's assets ('the debentures'). The plaintiff subsequently filed an action against the first defendant as agent for the other bankers in respect of the syndicated facilities ('the Shencourt suit') premised on a breach of duty to act in good faith in the conduct of its facilities. On 29 March 2006, some ten months later, the banks filed an action against the plaintiff and one Lee Kam Yoong, the plaintiff's shareholder and director, to recover the outstanding loans ('the banks' suit'). On 9 May 2006, the plaintiff procured an *Erinford* injunction restraining the first defendant from foreclosing on the Galaxy Ampang land and from executing on the debentures. The consolidated suits were heard by the High Court which then dismissed the banks' suit and allowed the Shencourt suit. All security placed by the plaintiff and Lee Kam Yoong were also released and discharged. Upon the banks' appeal, on 27 September 2013, the Court of Appeal reversed the decision of the High Court and set aside the High Court judgment against the banks. Judgment was entered against the plaintiff and Lee Kam Yoong for the amounts due and owing under the loans. Hence, the outstanding monies due under the syndicated facilities became due and owing. The securities E F G H I

afforded in respect of the syndicated facilities which had been discharged by the High Court were effectively reinstated. This included the rights enjoyed by the banks under the debentures. The plaintiff and Lee Kam Yoong then applied for a stay of the entirety of the Court of Appeal order pending the hearing of their application for leave to appeal to the Federal Court. The Court of Appeal granted a stay of the execution of the judgment against the plaintiff and Lee Kam Yoong until the hearing/final disposal of their application for leave to appeal to the Federal Court. On 20 November 2013, the first defendant appointed a receiver and manager ('R&M') over the assets of the plaintiff pursuant to their rights under the debenture. On 22 November 2013, the R&M's officer sought entry to the plaintiff's premises but he was blocked by the plaintiff on the grounds that the stay extended over the receivership. The plaintiff then filed the present suit seeking a declaration that the appointment of a R&M by the defendants was null and void. The plaintiff contended that the conduct of the defendants in making such appointment was *mala fide* and that accordingly they were estopped from doing so at this juncture. The banks counterclaimed for orders that the plaintiff be restrained from interfering with the R&M in exercising his powers under the debentures.

Held (dismissing plaintiff's application):

(1) The appointment of a R&M by the banks was clearly made pursuant to their rights and entitlements under the debentures. The power to appoint the R&M was clearly stipulated in these contractual documents and as such, the banks were at liberty to exercise such rights. (para 42)

(2) By reason of the judgment of the Court of Appeal on 27 September 2013, as the banks' appeal was allowed and the judgment of the High Court against the banks was set aside, it followed that the securities which had been discharged by virtue of the High Court judgment were reinstated or restored but only with effect from that date. Therefore, the banks could only exercise any rights under the debentures after 27 September 2013. (para 42)

(3) The plaintiff's application for a stay clearly related to a stay of execution of the monetary judgment subsisting against the plaintiff and Lee Kam Yoong. It did not extend to a stay of the receivership. (para 42)

(4) The doctrine of waiver and estoppel did not prevail in the current circumstances. It was the plaintiff who first initiated a suit against the defendants. It was only after this suit was initiated that the banks in fact recalled the facilities. The plaintiff secured an *Erinford* injunction that precluded the banks from exercising any of their

rights under the securities obtained in respect of the syndicated facilities. The entirety of the securities afforded by the plaintiff was injuncted. This included the debentures. Therefore, the banks were precluded from exercising their rights under the debentures. The decision of the High Court in 2009 had the effect of discharging the debentures and the banks could not proceed to appoint the R&M either at that stage. Only after the Court of Appeal's judgment was delivered was it possible for the banks to even contemplate the appointment of an R&M which they duly did. (para 42)

(5) The provisions of the debentures expressly stipulated that there was to be no waiver of the banks' rights save in writing. There was nothing in writing to that effect. As such, the banks' rights could not be said to have been waived. Further, the appointment of the R&M was not null and void or actuated by malice. The present suit was entirely without merit. (paras 42 & 43)

(6) The plaintiff had to afford immediate entry and co-operation to the R&M in the exercise of his duties under the debenture, failing which the banks could take such action as was necessary to secure compliance. (para 48)

Case(s) referred to:

Annie Quah Lay Nah v. Syed Jafer Properties Sdn Bhd & Ors And Another Appeal [2007] 1 CLJ 1 CA ***(refd)***

Boustead Trading (1985) Sdn Bhd v. Arab Malaysian Merchant Bank Berhad [1995] 4 CLJ 283 FC ***(refd)***

For the plaintiff - Raj Kumar (Victoria Martin with him); M/s Victoria Martin Chambers

For the defendant - SM Yoong (CY Kong with him); M/s Shook Lin & Bok

Reported by Amutha Suppayah

JUDGMENT

Nallini Pathmanathan J:

Introduction

[1] The plaintiff in this originating summons, Shencourt Sdn Bhd, seeks a declaration that the appointment of a receiver and manager by the defendants on 20 November 2013 over the assets of the plaintiff is null and void. It is further contended that the conduct of the defendants in making such appointment is *mala fide*, and that accordingly they are estopped from so doing at this juncture.

[2] The defendants in response assert that they are fully entitled under the terms of several debentures to so appoint a receiver and manager. They deny that they are estopped from so doing.

Factual Matrix

[3] The salient facts are adopted largely from the submissions of learned counsel for the defendants.

[4] The plaintiff and the first four defendants named in this originating summons have been entangled in litigation from 2005 onwards. The first four defendants ('the banks') had granted syndicated facilities in the sum of RM62.5 million ('the facilities') to the plaintiff on 27 June 1996 to finance the plaintiff's development project known as Galaxy Ampang. The first defendant, Aseambankers Malaysia Bhd is the facility and security agent for these facilities.

[5] Relevant to the present originating summons is the fact that the facilities were secured amongst others, by an assignment over the land on which Galaxy Ampang is situated, as well as four debentures dated 19 August 1996, 7 December 1999 and 30 January 2003 over all of the plaintiff's assets ('the debentures'). It is the exercise of powers under these debentures, given the prolix litigation amongst the parties, that arises for adjudication here.

[6] The fifth defendant has obtained judgment against the plaintiff on 22 February 2010 in respect of a loan in the sum of RM35 million which the plaintiff failed to pay.

[7] The full details of the factual background are set out in the decision of the Court of Appeal. I do not propose to set out the same in its entirety here. However in outline, it appears that after the grant of the syndicated loan facilities by the banks, the plaintiff had financial difficulties from about 1997 onwards. Upon default a restructuring agreement was entered into in 1999 whereby an additional facility of RM17 million was granted, and a second restructuring in January 2003. Under the latter the outstanding facilities were reduced, indulgence was given in relation to repayment, a moratorium was granted and the security originally granted was shared with the fifth defendant.

[8] In December 2003 further facilities were afforded and further terms were agreed in respect of repayment of the same.

[9] The plaintiff proceeded with the project and obtained its certificate of fitness on 13 January 2005. It had also procured time for the repayment of the facilities.

The Plaintiff's Suit In D2-22-665-2005

[10] On 12 May 2005 the plaintiff filed an action in Suit No. D2-22-665-2005 against the first defendant as agent for the other bankers in respect of the syndicated facilities ('the Shencourt suit'). The cause of action was premised on a breach of duty to act in good faith in the conduct of its facilities.

The Banks' Suit In D2-22-443-2005

[11] On 29 March 2006, some ten months later the banks filed an action in Suit No. D2-22-443-2005 against the plaintiff and one Lee Kam Yoong the plaintiff's shareholder and director to recover the outstanding loans ('the banks' suit').

[12] The two suits were consolidated and tried together. Zurich was not a party to these two suits.

The Grant Of An *Erinford* Injunction On 9 May 2006

[13] On 9 May 2006 some two months after the banks had initiated its suit for recovery of the outstanding loans, the plaintiff filed and procured an *Erinford* injunction in their favour. Under the terms of the *Erinford* injunction, Aseambankers (as agent on behalf of the other banks) was restrained either itself or through agents etc from:

(a) foreclosing on the land of approximately 205,005 square feet held under HS (D) 28688, PT No. 15752 Mukim Ampang, Daerah Hulu Langat Negeri Selangor and the commercial complex situated on it known as 'Galaxy Ampang Shopping Centre';

(b) executing on any of the securities/guarantees that were given by the plaintiff and/or third parties as security for repayment of the facilities.

[14] In this context it should be said at this juncture that the plaintiff strenuously maintained that this *Erinford* injunction in prayer (b) related only to guarantees afforded in consideration of the syndicated facilities granted by the banks, while the bank maintained that it related to all securities accorded in respect of the facilities and included the four debentures.

[15] Upon an objective reading of the order, it appears to this court that the purport of the *Erinford* injunction is to restrain the banks from either foreclosing or liquidating or acting upon any of the securities afforded in relation to the syndicated facilities, *albeit* debentures or guarantees. I so conclude because prayer (b) refers specifically to

A 'jaminan yang di berikan oleh plaintif dan/atau pihak ke-3'. It is clear that the plaintiff is not in a position to give a guarantee itself for the syndicated facilities afforded to it. The only security that could be procured from the plaintiff apart from the landed property was the debentures. Accordingly that is the only sensible and coherent
B construction to be afforded to the *Erinford* order of 9 May 2006.

The High Court Trial And Decision

[16] The consolidated suits were tried and on 6 May 2009 the High Court entered judgment against the banks and for the plaintiff whereby
C it was ordered *inter alia* that:

(i) The banks' recovery claim under its action was dismissed with costs;

(ii) All security placed by the plaintiff and Lee Kam Yoong were
D released and discharged;

(iii) The plaintiff succeeded in its claim against the banks for a breach of duty to act in good faith and damages were ordered as well as general damages to be assessed.

E **The Appeal Before The Court Of Appeal**

[17] The banks appealed against the decision of the High Court and on 27 September 2013 the Court of Appeal reversed the decision of the High Court allowing the appeal with the following orders:

F
(i) The banks' appeal was allowed and the High Court judgment against the banks was set aside;

(ii) Judgment against the plaintiff and Lee Kam Yoong (guarantor) was entered for the amounts due and owing under the outstanding loans.

G
[18] It is relevant that the net effect of allowing the banks' appeal and setting aside the High Court judgment against the banks, is that the outstanding monies due and owing under the syndicated facilities became due and owing once more. More significantly for the purposes of this appeal, the securities afforded in respect of these syndicated facilities
H which had been discharged by the High Court were effectively reinstated. This included the rights enjoyed by the banks under the debentures.

Application For Leave To Appeal To The Federal Court By The
I **Plaintiff And Lee Kam Yoong**

[19] An application for leave to appeal to the Federal Court is now pending.

The Application For A Stay Pending The Leave Application By The Plaintiff And Lee Kam Yoong

[20] The plaintiff and Lee Kam Yoong did, on 22 November 2013, apply for a stay of the entirety of the Court of Appeal order pending the hearing of the application for leave to the Federal Court. This application was opposed. The Court of Appeal granted a stay of the enforcement of the judgment against the plaintiff and Lee Kam Yoong. More particularly the order stipulates that:

> Pelaksanaan penghakiman terhadap Responden-responden Pertama dan Ke-2 yang telah di berikan dalam Mahkamah Mulia ini di gantung sehingga perbicaraan/pelupusan muktamad permohonan Responden-Responden di Mahkamah Persekutuan Malaysia untuk kebenaran untuk merayu ke Mahkamah Persekutuan terhadap perintah Mahkamah Yang Mulia ini bertarikh 27 September 2013 ...

[21] A translation of the foregoing reads as follows:

> The execution of the judgment against the First and Second Respondents granted by this Honourable Court is stayed until the hearing/final disposal of the Respondents' application in the Federal Court for leave to appeal to the Federal Court against the Order of this Honourable Court dated 27 September 2013.

[22] The judgment granted against the first and second respondents, ie, the plaintiff and Lee Kam Yoong (as may be seen from the order of the Court of Appeal dated 27 September 2013) is that they are jointly and severally liable to pay to the appellants, ie, the banks, the sum of RM47,232,496.11 together with interest and costs.

[23] It follows therefore that what is stayed is the liability of the first and second respondents to make the aforesaid payment. There is no stay in relation to:

(i) The setting aside of the judgment of the High Court dated 6 May 2009; or

(ii) The dismissal of the claim by the plaintiff and Lee Kam Yoong; or

(iii) The grant of judgment in favour of the banks. Only execution of the same is stayed.

[24] In summary it appears that what has been stayed is the execution of the judgment which the banks obtained against the plaintiff and Lee Kam Yong, namely the monetary sums.

A **Appointment Of Receiver And Manager On 20 November 2013**

[25] On 20 November 2013 Aseambankers on behalf of the banks appointed a receiver and manager over the assets of the plaintiff pursuant to their rights under the debenture. This was two days prior to the application for a stay by the plaintiff and Lee Kam Yoong.

B

[26] As stated above, it is clear from a reading of the order of the Court of Appeal that the stay was only in respect of the enforcement of the monetary judgment against the plaintiff and Lee Kam Yoong.

C **Receiver And Manager**

[27] On 22 November 2013 the receiver and manager's officer sought entry to the plaintiff's premises, as he had been appointed to take over the assets of the plaintiff under the debentures. His entry was blocked and despite negotiations and discussions, the plaintiff through its
D representatives maintained that the stay extended over the receivership. The present originating summons was then filed and an *ex parte* application sought. I heard this application and asked that it be dealt with *inter partes*. I also asked that the receivers and managers be present as the orders sought appeared to implicate them or to restrain them from
E carrying out their functions under the debentures.

[28] An *inter partes* hearing date was then fixed. I sought to have the parties resolve this matter by directing a meeting between the receiver and manager and the directors of the plaintiff, but this was to no avail. No resolution could be achieved and the receivers and managers were
F barred entry, notwithstanding their appointment.

[29] On 13 December 2013 the parties sought clarification from the Court of Appeal. Lord Justice Md Raus bin Sharif confirmed that the stay order was only in relation to the judgment entered in the Court of
G Appeal. I have dealt with the effect of such an order above.

[30] The plaintiff complains by this originating summons that the application for the appointment of a receiver and manager (R&M) is null and void because the appointment was made *mala fide*. It complains that the R&M was appointed as a mere 'afterthought'. It is also contended
H that the banks are precluded from appointing an R&M under the debentures by virtue of the doctrine of waiver and estoppel.

[31] The plaintiff complains that the R&M froze the plaintiff's bank account upon appointment and that this is *mala fide* for the following
I reasons:

(a) The banks never acted to appoint an R&M when they recalled the facilities on 23 March 2006;

(b) The banks acted to appoint an R&M although the application for a stay was to be heard in two days;

(c) The banks failed to consider that the shopping complex is an ongoing viable business;

(d) The complex has been 'kept alive' by the plaintiffs and has been expanding even with the plaintiffs' limited resources;

(e) The shopping complex is in no way threatened, the banks' assets are not imperilled as it has been maintained as a viable concern.

[32] The plaintiff maintains that the banks ought to have appointed the R&M when they recalled the facilities on 23 March 2006. The plaintiff points to the fact that no attempt whatsoever was made by the banks to appoint an R&M from 2006 to date, a period of some seven years and that accordingly the banks have waived their rights to do so. They are therefore estopped from now appointing an R&M.

[33] It is submitted for the plaintiff that the banks have elected from two mutually exclusive options, namely to either:

(a) appoint an R&M on 23 March 2006 or soon thereafter on the one hand; or

(b) to stay their hand and only appoint an R&M upon the complete disposal of this action.

(c) Both these options it is submitted arose in the course of litigation; and

(d) The banks made an unequivocal and unambiguous and conscious choice not to appoint an R&M until the disposal of the action.

[34] As such it is contended that they are estopped from doing so. (see *Annie Quah Lay Nah v. Syed Jafer Properties Sdn Bhd & Ors And Another Appeal* [2007] 1 CLJ 1; [2007] 1 AMR 1 at p. 7.

[35] The plaintiff further submits that the banks have lost their right to appoint the R&M pursuant to the debenture until the disposal of the action because:

(i) For seven years the banks did not attempt to appoint an R&M;

(ii) For seven years the banks made no query as to the assets of the plaintiff namely the Galaxy Shopping Complex.

[36] It is further submitted that the plaintiff has acted to its detriment in that it has sourced monies independently to keep the shopping complex afloat. This it is contended (in the absence of any evidence to this effect) is because 80% of the tenants are not paying any returns for some seven years. Relying on *Boustead Trading (1985) Sdn Bhd v. Arab Malaysian Merchant Bank Berhad* [1995] 4 CLJ 283; [1995] 3 MLJ 331 (at pp. 333, 347 and 348) they rely on the doctrine of estoppel to maintain that the banks are effectively precluded from exercising their contractual rights under the debenture to appoint a receiver and manager.

How Do The Banks Respond?

Appointment Of R&M

[37] The banks point out that the R&M was appointed pursuant to their rights and powers contained in the debentures granted by the plaintiff in favour of Aseambankers as agent for the banks in respect of the syndicated facilities. Clause 12.1 of the debentures clearly allows for this, providing that the agent, ie, Aseambankers may appoint an R&M of all or any of the properties and assets charged under the debentures. This clearly includes the shopping complex. As such it is beyond dispute that the banks are empowered to appoint an R&M under the debentures.

[38] It is equally clear that as a result of the decision of the Court of Appeal the debentures remain valid and enforceable with effect from the date of that decision. Prior to that date, by reason of the decision of the High Court, the debentures stood discharged.

[39] The rights of the banks who have lent significantly large sums of monies to the plaintiff are governed by the debenture and do not arise from the order of the Court of Appeal.

[40] The banks point out that the Court of Appeal did not allow a stay of the exercise of the banks' rights under the debenture. As such receivership was not stayed, although this was, I understand, brought up in the course of the hearing before the Court of Appeal.

[41] On the issue of waiver the banks maintain that they have not waived their right to appoint an R&M pursuant to the debentures for the following reasons:

(i) The debentures allow for the appointment of an R&M at any time the banks deem fit;

(ii) The *Erinford* injunction obtained by the plaintiff in the Shencourt action on 26 May 2005 against the banks, restraining them from, *inter alia*, exercising their rights under any of the securities afforded in respect of the syndicated facilities precluded them from being able to appoint a receiver and manager under the debentures. This injunction remained in place pending the disposal of the High Court injunction. Therefore no R&M could be appointed during this period;

(iii) Thereafter on 6 May 2009, upon completion of the trial, the securities including the debentures were discharged. Although the judgment was stayed, this did not enable the banks to exercise their rights and entitlement freely;

(iv) The banks proceeded to exercise their rights as soon as they could, namely when the judgment of the High Court was set aside on 27 September 2013.

[42] I have considered the full sequence of events giving rise to this claim for a declaration. It appears to this court that:

(i) The appointment of an R&M by the banks and Zurich, the fifth defendant, on 20 November 2013 was clearly made pursuant to their rights and entitlements under the debentures. The power to appoint an R&M is clearly stipulated in these contractual documents and as such the banks are at liberty to exercise such rights;

(ii) By reason of the judgment of the Court of Appeal on 27 September 2013, as the banks' appeal was allowed and the judgment of the High Court against the banks set aside, it follows that the securities which had been discharged by virtue of the High Court judgment were reinstated or restored but only with effect from that date. Therefore the banks could only exercise any rights under the debentures after 27 September 2013;

(iii) The plaintiff's application for a stay clearly relates, as can be seen from the order of that Honourable Court, to a stay of execution of the monetary judgment now subsisting against the plaintiff and Lee Kam Yoong. It does not and cannot, on a reading of that stay order, extend to a stay of the receivership;

(iv) On the issue of waiver and estoppel, I am satisfied that the said doctrine does not and cannot prevail in the current circumstances. It is clear from the lengthy chronology of events that I have painstakingly set out that it was the plaintiff who first initiated a suit against the defendants. It was only after this suit was initiated that the banks in fact recalled the facilities. Soon after the banks initiated their suit, some ten months after the plaintiff, the plaintiff secured

an *Erinford* Injunction that precluded the banks from exercising any of their rights under the securities obtained in respect of the syndicated facilities. It appears to this court, as I have stated above, that upon a reading of the *Erinford* order dated 9 May 2006, it is the entirety of the securities afforded *inter alia*, by the plaintiff itself that was injuncted. This would of necessity include the debentures. In this context, I do not concur with learned counsel for the plaintiff that the order only extends to the guarantee afforded by the guarantors and not the debentures. The plaintiff so submits on a literal translation of the word 'jaminan'. However such a literal translation is not preferable because the order ceases to have meaning. It is inconceivable that the plaintiff would afford itself a guarantee. That is indeed not the case. Therefore the proper and reasonable construction to be afforded to the order is that the banks were precluded from exercising their rights under the debentures. As such they could not appoint an R & M as of May 2006 until the disposal of the action in the High Court.

The decision of the High Court in 2009 had the effect of discharging the debentures and the banks could not therefore proceed to appoint an R & M either at that stage. The appeal was heard before the Court of Appeal in 2013 and only after judgment was delivered was it possible for the banks to even contemplate the appointment of an R & M which they duly did. It is to be borne in mind that despite the considerable and significant sums of monies made available to the plaintiff, the banks have effectively been precluded from exercising any of their rights in respect of the securities afforded until now. The banks have been unable to assess the income, if any, or outgoings of the complex which is charged to them. The appointment of an R & M, which is an exercise of a contractual right under the debenture, would enable the banks to ascertain the status of the plaintiff.

(v) As for the allegation of *mala fides* and the appointment being an after thought, this does not appear to be the case. The banks are only exercising their contractual rights. The fact that they do so at this stage has been explained fully above, namely because they could not do so before this date. No *mala fides* arises in the exercise of *bona fide* contractual rights. It would sound the death knell for commercial banking if institutions were not allowed to exercise clearly contractual rights in situations where the indebtedness of the debtor is not even in doubt, nor denied.

(vi) The provisions of the debentures expressly stipulate therein that there is to be no waiver of the banks' rights save in writing. There is nothing in writing to that effect so the banks' rights cannot be said to have been waived.

[43] For the reasons stated above, I am unable to concur that the appointment of the R & M on 20 November 2013 is null and void or actuated by malice. It is clearly otherwise than as stated by the plaintiff. In this context, the banks here have sought to file a counterclaim because the R & M who has sought entry to the subject premises has been consistently denied entry. There has been considerable opposition to his entry into the office to take account and stock of the assets of the plaintiff.

[44] Despite repeated proposals from the R & M as evidenced by correspondence and the urging of the court that the R & M be accorded some co-operation, these pleas and advice have been ignored. The net effect is that the plaintiff's directors remain hostile and have physically blocked the R & M from entering the premises. There has been absolutely no co-operation in terms of providing information as to the running of the complex over the past seven years.

[45] As such the banks seek a counterclaim *vide* this application for orders, *inter alia*, that the plaintiff be restrained from interfering with the R & M and or his agents or representatives in carrying out his duties and exercising his powers under the debentures. These powers are extensive as borne out by a perusal of the said debentures.

[46] The plaintiff maintains that the many allegations made in respect of the R & M are contentious and require consideration at trial.

[47] Given the foregoing competing positions, I shall at this juncture give orders in respect of the originating summons and such further relief as I consider necessary in the circumstances of this case, given that the orders sought include such further or other relief as the court considers necessary.

[48] Accordingly I find and order that:

(i) The originating summons filed by the plaintiff is entirely without merit and stands dismissed with costs payable by the directors personally;

(ii) The declaration sought to the effect that the appointment of the receiver and manager on 20 November 2013 is null and void is refused. On the contrary it is clear to this court that the banks are fully entitled under the restored debentures to exercise their rights there under, which includes the appointment of a receiver and manager;

(iii) Under further or other relief, it is ordered that the plaintiff through its directors and/or servants or agents afford immediate entry and co-operation to the receiver and manager in the exercise of his duties under the debenture, failing which the banks may take such action as is necessary under this order to secure compliance;

(iv) The banks' counterclaim in relation to damages for wrongful interference with the receiver and manager is adjourned for further hearing to a date to be fixed.